C.F. 71 & 72.

19 34

Department of Land Rec & Settlement

OFFICE Board of Rev

STATION Nairobi

File No. 5-6

Dated 1-3-34.

7.4.7.64/3

Date 2nd Inst.

Given for copying

Copied

Examined

Signed

Given for despatch

Despatched

Indexed

To be destroyed on

(SUBJECT.)

Suit - South Kavirondo - Sudipi Di Amusagi's

[illegible]

2-4267

Ref. A--3--No. 5709--33.

South Kanara Collector's Office,

Mangalore, dated 7th December 1933.

From

E. M. Gawne, Esq, I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Settlement,

Madras.

S i r,

Suits--Udipi District Munsiff's Court--O. S. 446/33--Advances--Loans--Prior mortgage--Recovery of mortgage amount--Defence sanction applied for.

I enclose a copy of the plaint in the above suit, which is for judgment and decree against defendants 1 to 4 for the sale of certain immoveable properties free from the objections, if any, of the remaining defendants, including Government, who are said to be the subsequent alienees of the properties.

2. Of the three items of property mentioned in the plaint, items 1 and 2 forming S. Nos. 67/1B and 85/4B of Tonse West village were, together with two other plots, S. Nos. 67/1A and 85/4A of the same village, mortgaged to Government by the 5th Defendant Monthu Rosario Quadros, in consideration of a loan of Rs.700 granted to him by the Sub Collector, Coondapur, on 21. 7. 1924. This loan was granted under the Agriculturists Loans Act for the purpose of reconstructing houses damaged by the floods in S. Nos. 62/2 and 85/2 of Tonse East village, of which the borrower was the mulgeni-holder. But as the value of his interest in these lands (benefited by the loan) was not sufficient to cover the full amount of the loan, the four plots mentioned above, viz., S. Nos. 67/1B, 85/4B, 67/1A and 85/4A, all of which then stood registered in his name, were given as security for the loan.

3. The loan was repayable in nine annual instalments, of

which the first six had been paid. The borrower(5th defendant) having failed to pay the 7th instalment amounting to Rs. 109-11-8, which fell due on 10th March 1932, summary recovery of the entire unpaid balance of the loan (Rs.285-6-11) was ordered by the Sub Collector. All the lands secured were then attached and brought to sale and were sold under the provisions of the Revenue Recovery Act in accordance with the terms of the grant of the loan. At the Revenue sale thus held, they were purchased by Kunhanna Belchada (11th defendant) for Rs.325. The sale was confirmed by the Sub Collector on 16th November 1932.

p.32. (L)

Pp. 85-87 (L)

p.87 (L)

4. Neither at the time of the enquiry into the loan application nor at the time of the attachment and sale of the lands, was it known that two of the plots had been mortgaged to the plaintiff or his predecessor-in-title, Santan Fernandes. In fact the borrower of the Government loan, 5th defendant, gave Government to understand that there was only one prior mortgage in favour of one Hosamane Monappa Shetti and had deliberately suppressed, by a false declaration, the prior mortgage in favour of the plaintiff. Though the sale notice was published in the District Gazette, the plaintiff did not choose to object to the sale which was not held subject to prior mortgages and cannot, therefore, be entitled to claim any relief as against Government. The suit notice sent by the Plaintiff was, in the special circumstances of the case, recorded by me.

p.7 (K)

5. The vakil who attends to Government suits at Udipi is of opinion that the plaintiff's suit is maintainable, that Government have no legal defence and that no written statement need be filed on behalf of Government. The Government Pleader, Mangalore, however, says that it is better that Government file a written statement. This is a peculiar case and I think it should be defended and request Board's sanction for its defence. I enclose a draft written statement prepared by the Government Pleader and slightly amended by me and recommend that it may be approved.

p.9-11 infra

p. 13 infra

Pp. 9-10 infra

6. I received a copy of the plaint dated 28th September 1933 together with the summons on 20th October 1933. The suit stands posted to 14th December 1933, but in view of the fact that the full three months' time required by rule 5 of Order XXVII of the Civil

Procedure Code has not been allowed by the District Munsiff, I am asking him to repost the case to some other date, allowing the necessary time. I nclose the records noted in the margin for reference.

Your obedient servant,

Collector.

* (1) Copy of Udipi Vakil's letter dated 8th November 1933.
(2) --do-- Mangalore Government Pleader's letter C.279/33 dated 20th November 1933.
(3) ----do---- do--- C.294/33 dated 2nd December 1933.
(4) My office file D. Dis. 2898/33
(5) Udipi Taluk file L.C. 8/1934
(6) ---do---R.Dis. 6386/32.

5

In the Court of the District Munsif of Udipi.

O.S.No. 446/1933.

Between:

Juvam Manuel Fernandes ... Plaintiff.

and

1. Rosalin Fernand Bai
2. Dulsin Bai.
3. Ciril Fernandes
4. Florin Bai (Minor - By guardian adlitem 1st Defendant)
5. Montu Rusari Kodra.
6. Secretary of State for India in Council, represented by the Dt. Collector of South Kanara, Mangalore.
7. Timmannakudru Alli Saheb.
8. Sheshi Shettathi.
9. Gopi Shettathi.
10. Venkatramana Bhatta.
11. Kunhianna Belchada.

Defendants.

Plaint under Section 26, O. VII. R.I. & Or.XXXIV R.1. and 4 of Act V of 1908.

The abovenamed Plaintiff begs to state as follows:-

I. That Plaintiff Juvam Manuel Fernandes is son of Mathias Fernandes. Roman Catholic, Ryot, residing in Vaderhobli Village, Kundapoor Taluk.

Plaintiff.

Process on Plaintiff may be served on his pleader at Udipi.

II. That 1st defendant Rosalin Fernand Bai is the widow of the late Xavier Fernandes; that 2nd Defendant Dulsin Bai, 3rd Defendant Ciril Fernandes, and 4th Defendant Minor Florin Bai are the children of the late Xavier Fernandes: that 5th Defendant Montu Rozario Kodra is son of Anthony Kodra; that 6th Defendant is the Secretary of State for India in Council, represented by the Dt. Collector of South Kanara, Mangalore; that 7th Defendant

Defendants.

Timmannakudru Alli Saheb is son of Ummer Saheb; that 8th Defendant Sheshi Shettathi and 9th Defendant Gouri Shettathi are the daughters of Akkamma Shettathi; that 10th Defendant Venkatramana Bhatta is the son of Khandige Ramakrishna Bhatta: that 11th Defendant Kunhiamma Belchada is the nephew of Deju Belchada: Defendants 1 to 5 & 7 to 11 are [illegible] Defendants 1 to 5 are Roman Catholics 7th Defendant is a Mahammadan; Defendants 8 & 9 are Nadavars: 10th Defendant is a Shivalli Brahmin; 11th Defendant is a Billawar. Defendants 1.2.3.4. 7,8,9,10 & 11 are residents of West Tonse village. Udipi Taluk:. 5th Defendant resides in East Tonse village. Udipi Taluk: that Minor 4th Defendant is under the care and protection of her mother 1st Defendant. } Defendants.

III. Subject-matter of the suit.

1. That on 10-7-1917 one Xavier Fernandes the late husband of the 1st Defendant and father of Defendants 2 to 4 executed in favour of one Santan Fernandes, a simple mortgage bond for Rs. 400/- for value received, hypothecating thereby the immoveable properties fully described herebelow.

2. The sum secured was repayable on 10-7-1922. with interes at 6% per annum.

3. The interest on the principal is payable at annual rests as long as the mortgage subsists and on such default such arrears of interest carry interest at 12% per annum.

4. That out of the consideration of the said mortgage, the mortgagee has not paid Rs. 107.8.0 as directed in the said deed. So that the mortgage is operative only to the extent of Rs. 292.8.0.

5. The mortgagee has transferred to the Plaintiff the right to recover the said sum of Rs. 292.8.0 together with interest accruing from 10.7.1920 onwards under a duly

registered deed dated 22.7.1929 for proper consideration.

6. The claim for interest falling due on 10.7.1921 is relinquished as time-barred and only the balance of intere due since then and the principal is claimed herein, as the sa remains unpaid inspite of various demands.

7. The Defendants 5 to 11 are subsequent alienees of t hypotheca and as such are interested in this suit and have be impleaded accordingly, so that the hypotheca may be sold free from their objections, if any.

8. The notice required by Section 80 of the Civil Procedure Code has been issued to the 6th Defendant, who has received it on 25.7.1933.

9. The cause of action for this suit arose on and sinc 10.7.1922 at West Tonse Village, where the hypotheca is situated, within the local limits of this Court.

IV. Reliefs claimed in this suit are valued at Rs.656.15.10 for purposes of court fees and jurisdiction.

V. Prays therefore for judgment and decree against the Defendants 1 to 4 for sale of the immoveable properties fully described herebelow free from the objections, if any, of Defendants 5 to 11 for the following sums and costs of this suit with further interest on the aggregate:-

(1)	Principal sum due under the mortgage.	292. 8. 0
(2)	Interest thereon at 6% per annum from 11.7.1921 to this date	214. 6.10
(3)	Interest on arrears of annual interest from the respective due dates till this date, (i.e., for 68 years, 7 months and 6 days on one year's interest Rs.17.8.10.)	150. 1. 0
		656.15.10

Description of the plaint mortgaged immoveable properties.-

ಪ. ಕ. ಸ ಅನುಬಂ ಕ. ಪ. ಅನುಬಂ ತಾಲೂಕು ಪಟ್ಟಣ

ನೆಲ್ಲಿ ಗ್ರಾಮದ ಸ. ನಂಬ್ರ 67/1 ಅರ್ಜಿಂಕ ತೆಂಕು ಬದಿ
ನೀಲ ಕೆ 30 ವಿಸ್ತಾರದ ಸ್ಥಳ ಅಸ್ತಿ. ಇದು ಲಿಡಿಸ ಸ.ರಿ.
ಆ. II 178, 75-80 ನಂಬ್ರ 1476/1899 ಕ್ಕೆ ರಿ. ಆಚ ವಹಿವತ್ತಿದ
ಬೇಲಿ ಕಡಿ ವಳಗೆ ಅಡಕವಿದ್ದಾಗಿದ್ದು ಈಗ ಸ. ನಂಬ್ರ 67/1B
ಕೆ 44 ವಿಸ್ತಾರದ್ದಾಗಿರುತ್ತದೆ.

(2) ಸದರಿ ಪಡುತೋಟ್ಟೆ ಗ್ರಾಮದ ಸ. ನಂಬ್ರ 85/4
ನಂಜ ಪೈಕಿ 1/3 ಬೇಲಿ ಅಂಕ ಮಧ್ಯ ಸ. 8 ವಿಸ್ತಾರದ ಖಾಲಿ ಅಸ್ತಿ.
ಇದು ಸದರಿ ವಿಚಾರ ಪತ್ರದ ಬೇಲಿ ಗಡಿವಳಗೆ ಅಡಗಿದ್ದಾದ್ದಾ
ಈಗ ಸ. ನಂ. 85/4B ನಂಜ ಕೆ 8 ವಿಸ್ತಾರದ್ದಾಗಿರುತ್ತದೆ.

(3) ಸದರಿ ಪಡುತೋಟ್ಟೆ ಗ್ರಾಮದ ಸ. ನಂಬ್ರ ತರಿಸ್ಥ ನಂಕು
ಬದಿ ತುಮಡು 1/2 ಅಂಶಿಕೆ ವಿಸ್ತಾರದ ಸಾಲಿಂಕುನ ನಕ್ಕರು
ರೂ ಪಾಯಿ 20/-, ತೆಂಗಿನ ಕಾಯಿ 17/-, ಮತ್ತು 17/- ರಂತ
ಕೇಳಿ ತೆರತಕ್ಕ ಭಾಗ್ಯತು ಸ್ಥಳ್ಳ, ಮರಮಿಟ್ಟು, ಎಗ್ಗಮೀಳಿ, ಮನೆ,
ಕಟ್ಟಿ, ಕೊಟ್ಟಿಗೆ ವಗೈರೆ ಮುಲಕ್ಕೂ ರಂಕ್ಷನ ಸ್ಥಳ ಅಸ್ತಿ. ಇದು
ಸದರಿ ವಿಚಾರ ಪತ್ರದ ಬೇಲಿ ಗಡಿವಳಗೆ ಅಡಗಿದ್ದಾದ್ದಾ

Dated 28.9.1933.

I, Juvam Manuel Fernandes. abovenamed Plaintiff, do hereby declare that the facts stated in paragraph III (5) above are true to my own knowledge and the other facts are true to my information and belief.

Dated 28.9.1933 at Vadeshwar Village.

List of documents relied on by Plaintiff.

1. Registered simple mortgage bond executed by the late Xavier Fernandes in favour of Santan Fernandes.	10.7.1917.
2. Transfer of Do. by Santan Fernandes in favour of Plaintiff.	22.7.1929.
3. Pro-note executed by Santan Fernandes to Plaintiff with endorsement of cancellation.	20.7.1929 & 23.7.1929.
4. Postal notice addressed to 6th Defendant by Plaintiff's Vakil.	24.7.1933.
5. Draft of Do.	Do.
6. Postal acknowledgment by 6th Defendant for Do.	25.7.1933.

No.6 to be got from 6th Defendant and No.5 will be produced later on.

Dated 28.9.1933.

(Sd.) XX XX XX
Vakil for Plaintiff.

(True Copy.)

Suradhwaraj 8.XII.
For Collector.

8.12.38

In the Court of the District Munsiff of Udipi.

O. S. No. 446/1933.

Between

Juvam Manuel Fernandes ... Plaintiff.

and

Rosalin Fernand Bai and others. ... Defendants.

Written statement of the 6th Defendant The Secretary of State for India in Council represented by the Collector of South Kanara under Order VIII Rules 1 and 2 of the Civil Procedure Code.

The 6th Defendant states as follows:-

1. That on 21st July 1924, this Defendant granted a loan of Rs.700 under the Agriculturist Loans Act to the 5th Defendant Monthu Rosario Quadros, on the security of items 1 and 2 of the plaint mentioned properties, viz., S. Nos. 67/1B and 85/4B of Tonse West village, together with two other plots S. Nos. 67/1A and 85/4A of the same village, of which he was then the registered holder.

2. That the loan was repayable in nine annual instalments, of which the first six had been paid. The borrower having failed to pay the 7th instalment which fell due on 10th March 1932 summary recovery of the entire unpaid balance was ordered, all the lands secured were attached and brought to sale, and were sold under the provisions of the Revenue Recovery Act in accordance with the terms of the grant of the loan and was purchased by the 11th Defendant.

3. That this Defendant was not aware of the mortgage in favour of the Plaintiff or his predecessor-in-title. In fact its existence was deliberately suppressed by a false declaration made by the 5th Defendant. Though the sale notice was published in the District Gazette, the Plaintiff did not choose to object to the sale. He is not therefore entitled to claim any relief as against this Defendant.

4. This Defendant further submits that, in the event of the Court deciding that the Plaintiff is entitled to a first charge, item 3 of the plaint mentioned properties may be ordered to be sold first and that if the Plaintiff's dues are not fully recovered by its sale, th remaining two items, which were purchased at the Revenue sale as aforesaid by the 11th Defendant may then be sold and the surplus amount of their sale proceeds if any, after deducting the Plaintiff's dues be paid to the 11th defendant.

South Kanara Collector's Office,
Mangalore, dated 7thDecember 1933.

Collector.

Letter-from M.R.Ry. B. Srinivasa Rao, Avl., Advocate,
Udipi.
To-the Collector of South Kanara, Mangalore, through the
Tahsildar of Udipi Taluk.
Dated-Udipi, 8th November 1933.

******

Suit - Udipi - District Munsiff's Court, O.S.No.446/1933

Advances - Loans - Prior mortgage - Recovery of mortgage amount.

******

In response to your letter to me dated 28.10.1933, in connection with the above suit, I have the honour to inform you, that I carefully went through the suit records, the plaint, the office-note and the other papers relevant to the case, and I have come to the conclusion that the suit of the plaintiff is maintainable, and that we have no legal defence to the suit. The Government has taken a mortgage from the 5th defendant who is a vendee from the original owner and mortgagor, in respect of the plaint properties, subsequent to the plaint mortgage. The sale by the mortgagor, in favour of Montu Rusari Kodra, and the revenue sale by us in enforcement of the instalment mortgage bond executed by Kodra in our favour, are not binding in law, upon the prior mortgagee, or his transferee, the present ------- plaintiff. Again, we cannot also claim a decree in our favour, as a subsequent mortgagee in this suit, because no amount is due to us now, as I find, from the papers under the mortgage bond executed by Kodra in our favour. We have realised the full amount due to us by the revenue sale. Under all the circumstances of the case, the revenue sale is null and void as ------ against the plaintiff, and the plaint properties will be sold again by the Civil Court, in enforcement of the plaint mortgage. We may leave the purchaser at the revenue sale who, I find, is also a party in this suit, to apply for the surplus sale proceed if any, remaining after satisfaction of the present plaintiff's claim, either in this suit or in separate proceedings, as he may be advised. I have accordingly come to the conclusion that we need not file any written statement in this suit. Kindly, however, consult the Government Pleader, Mangalore, as to ------ whether we can file any written statement claiming any reliefs

in this suit, and if he is of opinion that we can, kindly ask him to prepare the necessary draft written statement-and send to me the fair written statement duly signed, so that the same may reach me before 14.12.1933, on which date we are to file our written statement, if any. The bundles of records sent to me by you and the Tahsildar of Udipi with the plaint copy have been submitted herewith for reference. Awaiting further instructions.

(True Copy.)

Dmadhavarao 8-XII-33.
For Collector.

Hon
8.12.33

M.D'S.8/12.

13

Government Pleader & Public Prosecutor's O:

No.C.-279/33. Mangalore, 20th November 1

From

M.R.Ry. M. N. Prabhu Avl., B.A., B.L.,

Government Pleader, Mangalore.

To

The Collector,

South Kanara, Mangalore.

Sir,

Suits - Udipi - District Munsiff's Court - O.S.No.446/33 - Advances - Loans - prior mortgage - recovery of mortgage amount.

Your N.Ref. A3 No.5709-33, dated 16-11-1933.

******

After carefully going through the papers, I am of opinion that it is better that we file a written statement as per draft herewith sent. As we have to anticipate a suit in damages from the purchaser, I suggest that we file this written statement and try to get the highest possible price at the time of the sale.

Your most obedient servant,

(Sd.) M. N. Prabhu,

Government Pleader.

(True Copy)

Madhavarao 8.12.33.

For Collector.

8.12.33

No.C.294-33. Government Pleader & Public Prosecutor's Office, Mangalore. 2nd December 1933.

From

M.R.Ry. M.N. Prabhu Avl., B.A., B.L.,
Government Pleader, Mangalore.

To

The Collector,
South Kanara, Mangalore.

Sir,

Suits - Udipi - Dt. Munsif's court - O.S.No.446/33 - Advances - Loans - prior mortgage -recovery of.mortgage amount.
Your N.Ref.A3.No.5709-33 dated 28-11-1933.

The sale deed in favour of Monthu Rosario Kodra, the 5th Defendant, is not to be found in the records. This sale deed woul show from whom he purchased the property and in all probability h purchased it from Xavier Fernandes. This fact no doubt does not appear in the loan enquiry, where Kodra was accepted as a registered holder according to Revenue records and his title was not gone into. It is therefore not advisable to contest the title of the Plaintiff who derives his title from Xavier Fernandes or to put the Plaintiff to proof thereof.

As regards requesting the court to sell the plaint item 3 first, it would be the province of the 11th Defendant,Kunhianna Belchada, to do so; but, at this stage. we do not know whether he contests the suit or not and therefore I agree with the suggestion in the office note.

I did not make the property specific and clear because there is no data for it except the remarks of the Dy.Tahsildar of Udipi in his letter dated 13-8-1933. No documents are availabl to check the correctness of this report.

In the light of the office note which has been of great help to me, I send herewith a draft written statement for your approval.

The connected papers are herewith returned.

Your most obedient servant,
Sd/- M.N.Prabhu,
Government Pleader.

(True copy)

Bmadhavarao 8/12/33,
For Collector.

KM 8.12.33

17 9 (2) 7 Sec
4264/33A 15

Ref.A3.No.5709-33. South Kanara Collector's Office,

Mangalore, 19th December 1933.

From

E. M. Gawne, Esquire, I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

Sir,

Suits - Udipi - District Munsiff's Court - O.S.No.446/33

Advances - Loans - Prior mortgage - Recovery of mortgage amount - Defence.

******

1-3 ante

Please see my letter Ref.A3.No.5709-33, dated 7th December 1933. In reply to my reference referred to in paragraph 6 of my above letter, the District Munsiff, Udipi, informs me that the suit has been reposted to 27.1.1934.

Your obedient servant,

Bmadhavarao 20.XII.

For Collector.

20.12.33

M.D'S.20/12.

1-5-68

Suit Reported to 27-1-34

C.P. 16. 24,90,350—30-10-30. (6)

DRAFT FOR APPROVAL.

Office.

Despatch No.

When given to fair copying

Fair-copied by

Fair-copy compared by

When despatched

Register No. K 264/33 dated

From Th 27/34

Subject.

Suit - (South Kanara) - Udipa
T.M.Q. - G.S. no 446/33 - Loans
A.L.Act - Prior encumberance
Defence - Sanctioned.

THE

Ref:- Mrs. 56 dated 6.1.34

The Board sanctions the defence of the suit and approves the draft written statt submd by the Coll^r

Ref
6.1.34.

6.1.34

To the Coll^r of South Kanara

with records as per list returned

List of records

(1) (Orig.) file no D. Dis 3878/33

(2) Copy of this file no 8/1334.

R. F. XXII-A-19—89,000- 22-4-30 (B)

Subject.

FOR MEMBER

M3 — Tuibi (S. Kanara) - Indipi D.H.C. -
~~T.P.~~ C.S. No. 446/33 - Loans under the
~~Aff (Suit)~~ A.L. Act - Prior encumbrance -
Defence — Sanctions.

READ AGAIN B. P. No. _____, dated _____ 193

" " " _____, " _____ 193

READ ALSO :—

Register No. _____, From the I= 4264/33, No. Q., dated _____ 193

" " _____, " " _____, " _____, " _____ 193

" " _____, " " _____, " _____, " _____ 193

RESOLUTION. Mis - No. _____, dated _____ 193

The Board Sanctions
the defence of the Suit and
approves the draft written
statt subd by the Coll.

How can ... Pair prior mortgage ...
15.12.33 ... Sch. C
18.12.33

To

the Coll. of S. Kanara.
with records

Note
Recovery of Rs. & above
Attested is covered by the Defence
of the pleader for Govt at Rs 11-12-0

~~acct~~ the G. Pd. speech at p13 of
acct, para 5 of the Govt letter at p2
& the Executive ... e
seem from that the Govt have
no prima facie case but the suit
is proposed to be defended as
the written statt is proposed now
for ... in particular ... from
from the purchaser. the written
statt proposed to be filed also
does not disclose the clear ... of the
diff to procure ... unexpired
the Case of Govt. there does not
seem to be any ... in contesting
the suit on the merits of the
written statt ... as ~~proposed~~

Q
28/12

Q
19.12.51

J.S

M.3

It is admitted that Govt
have no Case that possible
harm ... Circs
but do not disclose the
Suit

Ag
28.12.51

RB

J. S's query above

... A suit in damages against

from the purchaser is anticipated.
p13 c.f. If Govt. does not raise
the present pleas* in this suit
alone, they may be estopped
from raising the pleas in
the suit for damages. if
any is pleas by the purchaser
The pleas justify the action of
the Govt in selling the property
secured to them.
The prayer in para 4 of the
written statement seems also
sacred. In the circumstances
the decree of the suit on the
lines of the written statement may
be sanctioned

*para 3. p9 c.f.

p10 c.f

pp9-10 c.f

3.1.84

J.S

4.1.84

6.1.84

AS (Sett)

AS (Sett)

Draft submitted before.

6.1.84

6.1.84